REMARKS

Reconsideration of the present application is respectfully requested for the reasons that follow.

Claim Objections

As an initial matter, the Examiner has objected to claims 67-69 for typographical errors. These claims have been amended according to the Examiner's suggestion and, therefore, this objection has been obviated.

Rejections under 35 USC § 112, second paragraph

Claims 60-75 are pending in the application. The Examiner has issued a constructive election of claims 67-70, arguing that claims 60-66 and 71-75 are directed to non-elected subject matter as a result of the initial Restriction Requirement. As such, claims 60-66 and 71-75 are withdrawn from consideration and claims 67-70 remain under consideration.

The Examiner has rejected claims 67-70 under 35 USC § 112, second paragraph, as being indefinite. The Examiner argues that the claims are unclear with respect to what is being administered. Specifically, the Examiner argues that the claims are unclear as to whether only CldC is being administered or whether CldC is being administered with tetrahydrouridine. These claims have been amended to clarify the claim language which indicates that both CldC and tetrahydrouridine/ cytidine deaminase inhibitor are administered together. Therefore, this rejection has been obviated and should be withdrawn.

Rejections under 35 USC § 112, first paragraph

The Examiner has rejected claims 67-70 under 35 USC § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner has rejected claims 67-70 for the claim element "consisting essentially of," and claim 68 for

the claim element "alone is ineffective in producing tumor control." Regarding the former, the Examiner argues that the "consisting essentially of" transitional phrase limits the scope of the claim to the specified materials and those that do not materially affect the basic and novel characteristics of the claimed invention. To comply with the written description requirement, the specification must also disclose the basic and novel characteristics of the claimed invention so that one of skill in the art would know from the disclosure what materials or steps are intended to be excluded. The Examiner argues that this latter condition has not been met. More specifically, the Examiner argues that it is not clear whether administration of PALA and/or FdC would materially affect the basic and novel characteristics of the claimed invention. Applicants disagree with the Examiner's arguments, but, in the interest of expediting prosecution, have amended claims 67-70 to include the "consisting of" transitional phrase. There is written description support in the specification for omitting PALA and FdC at p. 14, para. 2. Therefore, this rejection has been obviated and should be withdrawn.

Regarding the "alone is ineffective" element, the Examiner argues that the specification does not disclose exposing tumors to a dose of radiation that alone is ineffective in producing tumor control. The Examiner points out that p. 10 of the specification discloses using the radiation doses of 23.3 or 70 Gy. Applicants disagree with the Examiner's arguments, but, in the interest of expediting prosecution, have amended claim 68, to require a specific radiation dose of 23.3 to 70 Gy. Therefore, this rejection has been obviated and should be withdrawn.

Rejections under 35 USC § 102(b)

The Examiner has rejected claims 67 and 69-70 under 35 USC § 102(b) as being anticipated by WO 85/01871 (Greer). The Examiner argues that WO 85/01871 discloses administering to a patient CldC, in an amount sufficient to produce elevated levels of CldUMP and CldU, coadministered with tetrahydrouridine, thus anticipating the present claims. However, Applicants note that the claims require that tetrahydrouridine be administered in an amount to prevent toxicity of the CldC. Tetrahydrouridine modulates the CldC component of the formulation in that it renders CldC less toxic to

normal cells. Tetrahydrouridine also provides selectivity to the system as it inhibits the cytidine deaminase of tumor cells to a lesser extent than the cytidine deaminase of normal, non-tumor cells. Finally, tetrahydrouridine allows CldC to have a longer half-life, thus allowing CldC to be more selective before it is catabolized and excreted. Therefore, assuming arguendo, that Greer discloses co-administering CldC and tetrahydrouridine, it does not disclose the amount of tetrahydrouridine that is required by the present claims. Therefore, this rejection should be withdrawn.

Rejections under 35 USC § 103(a)

The Examiner has rejected claims 68 under 35 USC § 103(a) as being obvious over WO 85/01871 (Greer). The Examiner argues that WO 85/01871 does not explicitly teach administering radiation at a dose that is alone ineffective in producing tumor control. However, the Examiner argues that WO 85/01871 does teach using the same, ¼ or ¾ the dose of radiation as those patients not receiving pretreatment, and that it would be obvious to modify this teaching to lower the dose to one that alone is ineffective in producing tumor control. The claim 68 amendments discussed above obviate this rejection as the "alone is ineffective" element has been removed. Therefore, this rejection should be withdrawn.

Double Patenting Rejection

The Examiner has rejected claims 67-70 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-8 of US Pat. No. 4,894,364 (the '364 patent). The Examiner argues that the conflicting claims are not patentably distinct from each other because the methods of the '364 patent are directed to the administration of CldC and tetrahydrouridine to sensitize tumors. The Examiner has also rejected these same claims on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-18 of US Pat. No. 6,933,287 for similar reasons. Both of these rejections result from the "consisting essentially of" issue

discussed above. The Examiner is interpreting "consisting essentially of" as "comprising." As discussed above, the claims have been amended to include the transitional phrase "consisting of." As such, this rejection has been obviated and should be withdrawn.

In view of the foregoing, it is submitted that the present application is now in condition for allowance. Reconsideration and allowance of the pending claims are requested. The Director is authorized to charge any fees or overpayment to Deposit Account No. 02-2135.

Respectfully submitted,

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